IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.08.2007
Coram :

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN
and
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

Tax Case (Appeal) No.221 of 2004

Commissioner of Income Tax-I,
Chennai. Appellant

vs.

M/s. Lucas TVS Ltd.
Chennai Respondent

Tax Case Appeal preferred under section 260A of the Income Tax Act, 1961 against the order dated 31.10.2003 made in ITA No.189/Mds/97 by the Income Tax Appellate Tribunal 'B' Bench, Chennai against the order of the Commissioner of Income Tax (Appeals) VII, Madras in ITA.No.208/95-96 dated 04.11.96 against the assessment order of the Deputy Commissioner of Income Tax, Special Range - II, Madras-34, in PAN/GIR.No.3-L dated 16.02.96.

For Appellant : Mrs.Pushya Sitaraman,
Sr. Standing Counsel for IT Dept
For Respondent : Mr.R.Venkatanarayanan

JUDGMENT

(Judgment of the Court was delivered by K.RAVIRAJA PANDIAN, J.)

The appeal is filed framing the following questions of law:

1. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that excise duty and sales tax do not form part of the turnover for the purpose of calculation of deduction under section 80HHC?
2. Whether on the facts and in the circumstances of the case, the Tribunal was right in remanding the issue as to whether the scrap sale receipt should form part of the total turnover to the assessing officer?

2. The assessment year is 1993-94. The return of income for the said assessment year which was assessed under section 143(3) of the Income Tax Act, 1961. The assessing officer, while completing the assessment, recomputed the benefit under section 80HHC by including the excise duty, sales tax and scrap sales receipts in the total turnover. Aggrieved by that order of the assessing officer, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) who confirmed the

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order of assessment and dismissed the appeal. The assessee took the matter in further appeal before the Income Tax Appellate Tribunal. The Tribunal allowed the appeal. Aggrieved by the order of the Tribunal, the revenue filed the present appeal by formulating the questions of law as stated above.

3. It is submitted by the learned counsel for the revenue that the first issue is covered by the decision of the apex Court in the case of CIT v. Lakshmi Machine Works (2007) 290 ITR 667 wherein the Court held that Section 80HHC of the Act is a beneficial section; it was intended to provide incentive to promote exports. The intention was to exempt profits relatable to exports. Just as commission received by the assessee is relatable to exports and yet it cannot form part of 'turnover' for the purposes of section 80HHC, excise duty and sales tax also cannot form part of 'turnover'. Just as interest, commission, etc., do not emanate from the 'turnover' so also excise duty and sales tax do not emanate from such turnover. Since excise duty and sales tax did not involve any such turnover, such taxes had to be excluded. Commission, interest, rent, etc., do yield profits, but they do not partake of the character of turnover and therefore they are not includible in the 'total turnover'. If so, excise duty and sales tax also cannot form part of the 'total turnover' under section 80HHC(3). The Court further held that - 'The principal reason for enacting a formula in section 80HHC of the Income Tax Act, 1961 is to disallow a part of the concession thereunder when the entire deduction claimed cannot be regarded as relating to exports. Therefore, while interpreting the words 'total turnover' in the formula in section 80HHC, one has to give a schematic interpretation. The various amendments made therein show that receipts by way of brokerage, commission, interest, rent, etc., do not form part of business profits as they have no nexus with the activity of export. The amendments made from time to time indicate that they became necessary in order to make the formula workable. If so, excise duty and sales tax also cannot form part of the 'total turnover' under section 80HHC(3) of the Act; otherwise the formula becomes unworkable. Hence, following the decision of the apex Court, the first question of law is decided against the revenue and in favour of the assessee.

4. In respect of the second question of law, though it is framed as a question of law, we do not regard it as such. The correctness of the order of the Tribunal in remitting the matter to the assessing officer cannot be questioned by raising a question of law for the reason that the Tribunal has remitted the issue on the ground that on consideration of the orders of the authorities below, the Tribunal was of the view that there was no factual aspect pointed out categorically regarding the source of scrap, which was sold during the assessment year. That source was very much important for deciding whether the sale proceeds of the scrap was includible in the total turnover or not for calculating the deduction under section 80HHC of the Act. Under these circumstances, the Tribunal thought it fit, in our opinion rightly, to remand this issue to the file of the assessing officer to ascertain whether the scrap sales were covered by the scraps which were derived by the assessee while manufacturing the products that were exported by it during the period under consideration. The Tribunal has further directed the assessing

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officer to include the receipt of scrap sales to the total turnover if the assessing officer recorded an affirmative finding or if a negative finding is recorded that the receipt should not be included in the total turnover

5. In the absence of any factual material, the matter was remitted to the assessing officer to reconsider the issue afresh by giving directions which are in consonance with the provision and decided cases. In such circumstances, we do not find any illegality in the order of the Tribunal in remitting the issue to the assessing officer. Hence, the appeal is dismissed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Deputy Commissioner of Income Tax,
   Special Range II, Madras 34.

2. The Commissioner of Income
   Tax (Appeals) VII, Madras 34.

3. The Assistant Registrar,
   The Income Tax Appellate Tribunal,
   'B' bench, Chennai.

4. The Commissioner of Income Tax- I,
   Chennai.

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